PROCESS — MANNER AND EFFECT OF SERVICE — PRIVILEGE OF NON-RESIDENT PARTIES AND WITNESSES. — A non-resident came voluntarily into the jurisdiction to testify in a civil suit, and while there was served with summons. *Held*, that he is privileged from service of process. *Chittenden* v. *Carter*, 74 Atl. 884 (Conn.). See NOTES, p. 474.

RECEIVERS — LIABILITY FOR RAILROAD'S TORT COMMITTED BEFORE APPOINTMENT. — A court appointed a receiver to preserve the property of a railroad during litigation. He was sued for damages resulting from an injury sustained before the railroad passed into his possession. *Held*, that he is not liable. *Fountain* v. *Stickney*, 123 N. W. 947 (Ia.).

A receiver authorized by statute to be appointed to wind up a corporation succeeds to all the company's liabilities; for discharging obligations is a necessary step in winding up. *Pickersgill* v. *Myers & The Lycoming Fire Insurance Co.*, 99 Pa. St. 602. But the appointment by a court of equity of a receiver to hold and manage corporate property during litigation does not dissolve the corporation. *State ex rel. Attorney-General* v. *Merchant*, 37 Oh. St. 251. The property of the corporation is simply in the custody of the court of which the receiver is an officer. *Memphis & C. R. Co.* v. *Hoechner*, 67 Fed. 456. Since the receiver is to operate the business, it is proper that he should be liable for torts committed in the course of his operation. *Little* v. *Dusenberry*, 46 N. J. L. 614. *Cf. Texas & Pacific Ry. Co.* v. *Geiger*, 79 Tex. 13. And a change of receivers does not affect the cause of action, for it is against the fund in court or against the receiver in his official rather than his personal capacity. *McNulta* v. *Lockridge*, 141 U. S. 327. But since the object of the receivership is the most profitable management of the business, the receiver need not perform contracts previously made by the corporation. *Quincy, Missouri, & Pacific Railroad Co.* v. *Humphreys*, 145 U. S. 82. For the same reason the principal case properly holds that he need not make compensation for its previous torts. *Northern Pacific Ry. Co.* v. *Heflin*, 83 Fed. 93.

RULE IN SHELLEY'S CASE — EXECUTORY TRUSTS. — A deed of land was made to X in fee in trust for the use of A for life, and at his death to convey to such person or persons as A might by his will direct, or in default of such direction to the heirs of A in fee. A made a conveyance of the land to the defendants in fee, and later died intestate. The defendants claimed that this conveyance was valid under the rule in Shelley's Case. *Held*, that the rule is not applicable. *Steele* v. *Smith*, 66 S. E. 200 (S. C.).

The rule in Shelley's Case does not apply to executory trusts. *Papillon* v. *Voice*, 2 P. Wms. 470; *Berry* v. *Williamson*, 11 B. Mon. (Ky.) 245, 265. An executory trust is one whose limitations are not completely declared but are to be determined by the trustee with the aid of the court according to the creator's apparent intention. *Jervoise* v. *The Duke of Northumberland*, 1 Jac. & W. 559, 570; *Cushing* v. *Blake*, 30 N. J. Eq. 689. Though of more frequent occurrence in English marriage settlements and wills, they are also known in this country. *Sackville-West* v. *Viscount Holmesdale*, L. R. 4 H. L. 543; *Nicoll* v. *Ogden*, 29 Ill. 323, 384. An executory trust of this kind must be carefully distinguished from a trust executory in the sense of not executed by the statute of uses. See *Estate of Fair*, 132 Cal. 523, 568. This distinction is vital in avoiding confusion with the equally well settled principle that for the rule in Shelley's Case to operate the two estates must be of the same quality. *Jones* v. *Lord Say & Seal*, 8 Vin. Abr. 262; *Griffith* v. *Plummer*, 32 Md. 74. Where the trusts are perfectly declared, a mere direction to convey will not make the trust executory in the strict sense. *Egerton* v. *Earl Brownlow*, 4 H. L. Cas. 1, 210; *Cushing* v. *Blake*, *supra*. But, by the better authority, the duty to convey prevents the trust from being executed by the statute. *Ayer* v. *Ritter*, 29 S. C. 135. *Contra*,

Bacon's Appeal, 57 Pa. St. 504. In the present case, there was no strict executory trust. But since the particular estate was legal and the remainder unexecuted and equitable, the court rightly held that the rule in Shelley's Case was inapplicable.

STATUTE OF FRAUDS — PART PERFORMANCE — PAROL PARTITION OF LAND. — In an action of ejectment, the defendant offered to show that one of his predecessors in title had been in adverse possession of the land, under a parol partition between tenants in common, for more than the statutory period of limitation. *Held*, that the evidence should have been admitted. *Oliver* v. *Williams*, 50 So. 937 (Ala.).

A parol partition between tenants in common executed in severalty with livery was good at common law. See CO. LIT. 169 *a*. Jurisdictions differ as to whether a parol partition is within the Statute of Frauds. Most statutes expressly cover such a transaction. *Porter* v. *Perkins*, 5 Mass. 233. *Cf. Johnson* v. *Wilson*, Willes, 248. *Contra*, *McKnight* v. *Bell*, 135 Pa. St. 358. Possession in severalty, however, especially if continued for some time and if improvements be made, takes the case out of the statute. One ground for this result is that part performance gives an equitable title in severalty, as in the case of a contract for the sale of land. *Welchel* v. *Thompson*, 39 Ga. 559. Another basis of the rule is that the parties to the partition are estopped to attack it. *Berry* v. *Seawall*, 65 Fed. 742. *Cf. Le Bourgeoise* v. *Blank*, 8 Mo. App. 434. And for this reason one jurisdiction which repudiates the doctrine of part performance as applied to sales of land upholds a parol partition. *Pipes* v. *Buckner*, 51 Miss. 848. Moreover, the partition may be confirmed by decree of equity. *Hazen* v. *Barnett*, 50 Mo. 506. Or possession for the period of the Statute of Limitations may give legal title. *John* v. *Sabattis*, 69 Me. 473; *Slone* v. *Grider*, 19 Ky. L. Rep. 1698. And since in the principal case there was adverse possession in severalty for the statutory period, the decision is clearly correct.

STATUTE OF FRAUDS — SALES OF GOODS, WARES, AND MERCHANDISE — CONTRACT FOR GOODS TO BE MANUFACTURED. — An action was brought on an oral contract for the manufacture and delivery of a quantity of oil cases. *Held*, that a contract for the sale of goods already existing, or such as the vendor ordinarily produces for the general market, whether on hand at the time or not, is within the Statute of Frauds; but if the goods are to be manufactured upon a special order, the contract is not one for the sale of goods. *Courtney* v. *Bridal Veil Box Factory*, 105 Pac. 896 (Ore.).

There are three conflicting rules, defining a contract for the sale of goods as distinguished from a contract for work and labor. The English rule is that if the contract will result in a sale of goods, either presently existing or to be manufactured, the statute applies. *Lee* v. *Griffin*, 1 B. & S. 272; *Isaacs* v. *Hardy*, 1 Cab. & E. 287. But *cf. Clay* v. *Yates*, 1 H. & N. 73. In this country, what is commonly called the New York rule is that when the goods are to be manufactured the statute does not apply. *Crookshank* v. *Burrell*, 18 Johns. (N. Y.) 58; *Winship & Co.* v. *Buzzard*, 9 Rich. Law (S. C.) 103. *Cf. Bagby* v. *Walker*, 78 Md. 239; *Cooke* v. *Millard*, 65 N. Y. 352, 361. The Massachusetts rule, followed in the principal case, and embodied in the Uniform Sales Act, avoids both extremes. *Mixer* v. *Howarth*, 21 Pick. (Mass.) 205; *Finney* v. *Apgar*, 31 N. J. L. 266. See WILLISTON, SALES, § 52. *Cf. Garbutt* v. *Watson*, 5 B. & Ald. 613. Since the statute applies equally to executed and executory contracts, the mere fact that the goods are not yet in existence, or that labor must be expended on them, should not affect its applicability. The English rule, distinguishing between a contract essentially for a chattel and one essentially for labor, is to be preferred on principle. But the Massachusetts rule, laying down a working criterion by which the essence of the contract is to be determined, has practical advantages. But see *Pitkin* v. *Noyes*, 48 N. H. 294, 302.